

21. The Commission does not offer any compelling explanation for its determination that emerging technologies warrant an allocation of 220 megahertz.^{26/} The Commission has seriously overstated the spectrum requirements for emerging technologies. In the process, the Commission has failed to articulate a reasonable basis for its proposal to reallocate such a lavish amount of valuable spectrum to speculative uses. Under applicable case law, an agency must "articulate with reasonable clarity its reasons for decision, and identify the significance of the crucial facts"^{27/} The Notice does not satisfy this standard. Unless this situation is corrected, the Commission's allocation of 220 megahertz for emerging technologies could be found to be arbitrary and capricious.

^{26/} The Commission's decision in the Direct Broadcast Satellite ("DBS") proceeding offered at least some rationale for the allocation of 500 megahertz of spectrum for the DBS Service. In the Matter of Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference, 90 F.C.C.2d 676 (1982). In that proceeding, the Commission determined that DBS providers would require approximately 50 megahertz of spectrum per system for the service to be viable. There were approximately ten interested applicants. The Commission therefore multiplied the spectrum required per system by the number of interested applicants and determined that 500 megahertz of spectrum would be required for the entire allocation. There is no such logic to the determination, in this proceeding that 220 megahertz of spectrum is required for emerging technologies.

^{27/} Greater Boston Television Corporation v. FCC, 444 F.2d 841, 851 (D.C. Cir. 1970).

22. Metropolitan respectfully urges the Commission to develop a more rational foundation for its ultimate decision in this proceeding. The Commission can do this by conducting a more deliberate and more profound examination of the legitimate spectrum requirements for emerging technologies. Certainly, "approximations" are an integral element of any attempt to anticipate future spectrum requirements. Nonetheless, where the Commission seeks to allocate, for services that will be largely land mobile in nature, more spectrum than is currently allocated for all existing land mobile services, it would appear that the Commission's estimate lacks any realistic sense of proportion.

23. The Commission can correct this deficiency by adopting a more thoughtful and realistic approach in this proceeding and, ultimately, by allocating a lesser amount of spectrum to accommodate emerging technologies. Metropolitan is convinced that there is a fundamental flaw in allocating a total of 220 megahertz for emerging technologies simply because that is the amount of spectrum which "could be designated" for such potential uses. The Commission must underpin its decision, from a procedural standpoint, by allocating a more realistic amount of spectrum for the services it intends to foster.

C. The Commission's Proposed Transition and Future Operational Plan Does Not Meet the Needs of Incumbent OFS Licensees

24. If, in spite of all of the foregoing reasons, the Commission concludes that the proposed reallocation must go forward, then it must improve the transition and operational plan detailed in the Notice. In Metropolitan's view, the plan proposed by the agency is inadequate to provide for continued satisfactory operation of public safety oriented OFS systems because it will not prevent the occurrence of objectionable interference to OFS systems. The Commission's proposal would allow emerging technology interests licensed in the 2 GHz band to operate on a "co-primary" basis with such pre-existing OFS entities as state and local governments. Accordingly, the critical operations conducted on these frequencies would be susceptible to -- and unable to obtain protection from -- interference created by the transmissions of emerging technology operators. The sensitive operations now conducted in this spectrum cannot tolerate any objectionable-level interference. Loss of signal at a critical moment could result in catastrophic consequences for the public. For example, loss of Metropolitan's remote control of water supplies could mean that water would be unavailable during efforts to control fire in the Los Angeles area. Accordingly, any transition and subsequent operations plan for accommodating emerging technologies in the 2 GHz OFS spectrum must allow existing

OFS facilities to operate on a primary basis and require emerging technologies to operate in the band on a purely secondary basis.

25. Moreover, the Commission must not allow emerging technology operators to utilize 2 GHz OFS frequencies until sufficient interference standards have been established which eliminate potential interference to Metropolitan's critical communications network. While EIA Bulletin 10E creates practical standards for analysis of interference between fixed operations, no standard currently exists to provide workable interference parameters for "fixed to mobile" communications. Such a standard must be developed prior to any use of the critical 2 GHz band by new technology interests, and the standard must be enforced so that interference potential to public safety-oriented telecommunications activities will be minimized. Further, in order to ensure that telecommunications systems which are vital to the public welfare can expand to meet future needs, the Commission should reserve a significant portion of the 2 GHz band solely for the expansion of state and local government systems.

III. CONCLUSION

26. In conclusion, Metropolitan respectfully suggests that the agency remember that it was the lack of any viable, reliable, and available alternatives to frequencies in the 2 GHz band which lead Metropolitan to rely on 2 GHz frequencies for its communications in the desert area bordering the Colorado River. Consequently, any decision by the Commission to reallocate the 2 GHz band for emerging technologies would have a severe, adverse impact on Metropolitan's ability to provide the people of Southern California with the water they need. Moreover, since many other public safety organizations also have licenses in the 2 GHz band, Metropolitan believes that adoption of the Notice would be contrary to the interests of the nation as a whole. Therefore, Metropolitan strongly believes that the Commission should not reallocate the 2 GHz band for use by emerging technologies, but asks that if it does, the existing 2 GHz operations of Metropolitan and other state and local government entities be grandfathered on a primary basis (with new technology entrants on a secondary basis) and that a significant portion of the 2 GHz band be set aside for the expansion of existing state and local government systems.

WHEREFORE, THE PREMISES CONSIDERED, Metropolitan Water District of Southern California respectfully requests that the Federal Communications Commission act in a manner consistent with the views expressed herein.

Respectfully submitted,

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